U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: WAC 02 044 51028 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

AUG 10 2004

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The petitioner filed a motion to reopen or reconsider. The director granted the motion, and affirmed his previous decision. This matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of California that provides investment and management services. The petitioner claims that it is an affiliate of the beneficiary's foreign employer, located in Manila, Philippines. The petitioner now seeks to employ the beneficiary as its project manager for three years.

In a decision dated March 21, 2002, the director denied the petition stating that the petitioner had failed to demonstrate the existence of a qualifying relationship between the foreign and U.S. entities, and did not establish that the beneficiary had been employed abroad and would be employed in the United States in a primarily managerial or executive capacity. The director noted a discrepancy on Schedule K of the petitioner's year 2000 corporate tax return, in which the petitioner failed to indicate that an individual or corporation owned a percentage of the U.S. corporation's stock. The director therefore determined that the petitioner had not established the claimed affiliate relationship, and likewise, did not submit voting proxies or other agreements demonstrating a subsidiary relationship. The director also stated that the broad description of the beneficiary's position abroad supported a finding that the beneficiary provided the services of the company rather than managing a subordinate staff of professional, managerial, or supervisory employees who would relieve him from performing non-qualifying job duties. Lastly, the director noted that it appeared from the record that the beneficiary would be employed in the U.S. entity in the non-qualifying capacity of a first-line supervisor.

On April 17, 2002, counsel filed a motion to reopen or reconsider, which the director granted. Counsel provided a revised copy of the petitioner's corporate tax return, which reflected that 70% of the petitioner's stock is owned by the beneficiary's foreign employer. Counsel also submitted a declaration from the beneficiary explaining his employment abroad and in the United States in a primarily managerial or executive capacity.

The director granted the motion. In a decision dated January 15, 2003, the director determined that the petitioner had not established eligibility for the beneficiary's L-1A classification. The director again noted the findings outlined above, and stated that altered evidence previously submitted by the petitioner in connection with a separate nonimmigrant petition cast doubt on the reliability of the petitioner's evidence in the instant matter. The director affirmed his previous decision and denied the petition.

On appeal, counsel for the petitioner fails to identify with any specificity an erroneous conclusion of law or fact in the director's decision. In addition, neither counsel nor the petitioner offer any rebuttal to the director's adverse finding relating to the petitioner's credibility. On Form I-290B, counsel simply asserts: (1) "Petitioner submitted sufficient evidence to establish a qualifying relationship exists between the foreign corporation 'AAPHMI', parent and Petitioner, U.R. Capital, Inc."; and (2) "Petitioner submitted sufficient evidence to establish the Beneficiary is employed in a managerial capacity with the parent corporation 'AAPHMI' and will be so employed with the Petitioner herein." Counsel further states that a brief or

evidence would be submitted to the AAO within 30 days. The appeal was filed on February 13, 2003. As of this date, the AAO has received nothing further and the record will be considered complete.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. *See generally* 8 C.F.R. § 214.2(l).

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The amended tax returns are not sufficient evidence to establish that a qualifying relationship exists between the petitioner and the claimed parent company. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.